IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8239 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MADHUSUDAN RANGILDAS RANA

Versus

STATE OF GUJARAT

Appearance:

MR SUNIL C PATEL for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 27/03/2000

ORAL JUDGEMENT

1. The Commissioner of Police, Surat City, Surat, passed an order on September 21, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Madhusudan Rangildas Rana, under

the provisions of the said Act.

2. The detaining authority took into consideration four registered offences against the detenu and statements of two anonymous witnesses to come to conclusion that the detenu is a bootlegger and is required to be detained under the PASA Act in order to immediately prevent him from pursuing his illegal and anti-social activities. The authority observed that resorting to less drastic remedy is not possible and may not prove to be so efficacious as detention under the PASA Act.

3. The petitioner/detenu challenges the order of detention on various counts. However, Mr. Patel, learned advocate for the petitioner, has restricted his arguments to the ground of delay in passing the order. He submitted that the last registered offence relates to July 13, 1999. The last statement of the anonymous witness is recorded on July 22, 1999. The said statement was verified by the detaining authority on September 18, 1999 and the order was passed on September 21, 1999. Mr. Patel submitted that there is a long gap between recording of the last statement and its verification, i.e. the period between July 22, 1999 and September 18, 1999. Mr. Patel submitted that this long delay has remained unexplained by the detaining authority. Lapse of such a long time in absence of involvement of the detenu in alleged activities would snap the causal connection which ought to have been considered by the detaining authority. The urgency shown in the grounds of detention cannot be considered as genuine and Mr. Patel, therefore, urged that the petition may be allowed and the order of detention may be quashed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. In view of what is submitted by rival sides, factually it is not disputed that the last statement was recorded on July 22, 1999 and it was verified on September 18, 1999. Thus, there is a lapse of about 57 days. If the delay is caused in making a proposal for detention, the authority ought to have considered this aspect while passing the order and while considering urgency for the need of passing the order. If it is delay on part of the detaining authority itself after receiving the proposal, it is still worse. In either case, it would affect the genuineness of the satisfaction recorded by the detaining authority for the immediate need for detaining the detenu under the PASA Act to

prevent him from pursuing his activities. This will also have a bearing on consideration of less drastic remedy by the detaining authority, which has been turned down by the detaining authority only on the ground of delay that may be caused in pursuing such remedies, namely, externment proceedings. The order, therefore, stands vitiated on the ground of delay in passing the order affecting genuineness of the urgent need for exercise of these powers. The petition, therefore, deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated September 21, 1999, passed against the detenu is hereby quashed. The detenu-Madhusudan Rangildas Rana, is ordered to be released forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs. Writ to be sent to Sabarmati prison.

[A.L. DAVE, J.]

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